EX PARTE OR LATE FILED ORIGINAL CC Docket # 99-216

From: "Peter van der Heim" <petervanderheim@hotmail.com>
To: K4DOM.K4PO2(mpowell,sness),K1DOM.K1PO1(bkennard),K2DOM.K2PO1(gtristan),K5DOM.K5PO2(hfurchtg)
Date: 3/2/00 5:10PM
Subject: Disabilities issues and 47CFR Part 68

February 24, 2000

Mr. Chairman and Distinguished Members of the Commission:

I am an engineer working with a major manufacturer that I cannot name for obvious reasons. I have been involved in the Negotiated Rulemaking on Hearing Aid Compatibility, which gave birth to the FCC Part 68 Section 68.317 on Volume Control. I believe that the FCC rules in 47CFR Part 68 Sections 68.316 and 68.317 are essential to the disabled community. I have several relatives who are hard of hearing and are struggling with these issues. They are only a few of many Americans belonging to the disabled community who believe that Part 68 of the FCC Rules must be preserved and administered with government oversight at all costs.

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I have been informed that there is a Notice of Proposed Rulemaking being prepared at the FCC Common Carrier Bureau level that is going to totally entrust Part 68 regulations and implementation into the hands of the manufacturers, in a Supplier‡s Declaration of Conformity (SDOC) format. The company I am involved with is expecting this to go into effect in the near future and so have other manufacturers in several trade associations pushing for this concept. In fact, at several meetings that I attended, my colleagues from other manufacturing companies are expecting to completely abandon their plan to design and to test for compliance to FCC Part 68, because "there will be no more Part 68", and investigation of non-compliance will only be on a complaint or discovery basis. So if there is no complaint submitted (not because there is no non-compliance), there will be no enforcement and therefore the Part 68 regulations on which the disabled community rely will be only a law without any teeth.

I beg you to carefully consider this decision in the works. Currently, manufacturers have to submit an application to the FCC in which they enclose compliant test data to be filed under the records of the FCC Registration Grant. Just this small step of submitting to an entity other than in-house parties makes a world of difference. If manufacturers only have themselves to answer to, I believe there is a real conflict of interest in which the disabled community will be the big loser.

I am attaching a copy of the letter from Dr. Gregg C. Vanderheiden who made the case to the House Judiciary Committee regarding the obvious danger stemming from the economic motivations of the manufacturers. Although the subject in the attached letter deals specifically with Web Accessibility Guidelines, the notion of economic motivations cannot be ignored. I do believe that most manufacturers want to do the right thing if there is government mandate and oversight, whether by the government directly or by third parties acting on behalf of the government. But because of the bottom

line overriding concerns, they will only implement what is absolutely necessary to make financial homeruns. Since any implementation of regulations will have some associated costs, even extremely small, this activity will be relegated to the * to do¶ list that will never get done, or ignored altogether.

I am sending this plea to you in the hopes that the Commission will carefully consider the matter before going public with a Rulemaking. I am also sending a copy of this letter to the Access Board and to associations within the disabled community as well as any interested press personnel. I sincerely hope that the FCC will balance all competing interests in an equitable and insightful manner.

Peter van der Heim
petervanderheim@hotmail.com

CC:

K4DOM.K4PO2(SMAGNOTT),K5DOM.K5PO1(whowden,jknapp),K1DOM.K1PO1(awall),K3DOM.K3PO2(yvarma)

Proposed Addition to the Record
House Judiciary Committee
Subcommittee on the Constitution
February 9, 2000
Oversight Hearing on
"The Applicability of the Americans with Disabilities Act (ADA)
to Private Internet Sites"

To: Chairman Charles T. Canady

From: Gregg C. Vanderheiden, Ph.D.
Director, Trace R&D Center, University of Wisconsin-Madison

Date: February 14, 2000

RE: **Points of Information and Clarification**
Regarding House Subcommittee Hearing on Internet and ADA

I spoke with you after the hearing last week, providing information on some of the topics and questions raised during the hearing. As per our discussion, I am sending this follow-up note so that the information can be included in the formal record of the hearing. These notes simply repeat or elaborate on the topics we discussed after the hearing.

For your records I am Gregg C. Vanderheiden, Ph.D., Professor in the Industrial Engineering Department, and Director of the Trace Research & Development Center at the University of Wisconsin-Madison. I am the principal investigator for the Rehabilitation Engineering Research Center on Information Technology Access, funded by the National Institute on Disability and Rehabilitation Research, U.S. Department of Education. I also work with the Partners for Advanced Computational Infrastructure (PACI) Program funded by the National Science Foundation.

The Trace R&D Center focuses on ways to make standard information technology and telecommunication systems more accessible for people with all types of disabilities. Trace works closely with the W3C's Web Accessibility Initiative and I co-chair and co-edit the W3C-WAI Web Content Accessibility Guidelines. I was also a member of the Electronic and Information Technology Access Advisory Council (EITAAC) of the US Access Board.

Clarification on the use of graphics and color on web pages:
The Web Accessibility Guidelines do NOT discourage the use of graphics, icons or color. In fact they encourage the use graphics.

Another area of inquiry at the hearing that was not clearly covered was whether the Web Accessibility Guidelines allow the use of graphics, or discourage their use. The answer is that graphics, icons or color are not barriers to accessibility. In fact, the Web Accessibility Guidelines ***encourage*** the use of graphics. They make the web easier for many individuals with different types of disabilities (as well as other users). The guidelines do say, however, that where information is presented ONLY in graphic form, that the information should also be available in text form and that information that is conveyed with color should also be available in another way.

It should be noted that this alternative text (which has been required for the past 2 years as part of standard HTML) is usually invisible to a reader who has graphics turned on. Thus the use of alternative text would not alter the appearance of the web page at all. The text only appears when the graphics are turned off (or before the graphics are loaded). Incidentally, the text is also visible to search engines, which makes the pages easier to find using search engines. It is also useful to anyone using phone browsers, or with slow Internet connections.

The phrase which Chairman Canady sought clarification on in the hearing ("at least one mode that minimizes the cognitive and memory ability required of the users") **is not from the web accessibility guidelines.**

During the hearing clarification was sought (but not received) on whether the web accessibility guidelines require web sites to provide at least one mode of presentation that minimizes the cognitive and memory ability required of users.

The answer is no. This requirement is not part of the W3C Web Content Accessibility Guidelines or requirements proposed by EITAAC for the web content. Rather, the statement referred to above is from the EITAAC general guidelines that apply to all electronic and information technology. That clause is meant to cover a wide range of products, from copiers to phones. The clause from the EITAAC report that addresses web accessibility (and would be used to interpret any general guidelines) was located lower in the report and specifies the use of Priority 1 and 2 guidelines (only)of the W3C-WAI Web Content Accessibility Guidelines.

The appropriate EITAAC report item for web access is:

5.3.3.1 Web content shall conform with level 'Double-A', satisfying all Priority 1 and 2 checkpoints, of the World Wide Web Consortium (W3C) 'Web Content Accessibility Guidelines 1.0' available at http://www.w3.org/TR//WAI-WEBCONTENT

The language in the Web Content Accessibility Guidelines that applies to this is:

> **14. Ensure that documents are clear and simple so they may be more easily understood.**
>
> **14.1** Use the clearest and simplest language appropriate for a site's content. [Priority 1]

(There are also two Priority 3 guidelines in the W3C guidelines for this area. However the EITAAC did not include any Priority 3 items in its recommendations so they would not be included.: - 14.2 Supplement text with graphic or auditory presentations where they will facilitate comprehension of the page. [Priority 3] and - 14.3 Create a style of presentation that is consistent across pages. [Priority 3] ")

Clarification on "One size fits all" misunderstanding : Providing web accessibility is an additive process not a substitute.

Clarification was sought during the hearings as to whether web accessibility requires a "One-size-fits-all" or " least-common-denominator" approach.

Neither of these approaches is required or recommended by the guidelines. In fact the guidelines specifically caution ***against*** that approach. Instead the guidelines recommend that pages be created in a flexible way that allows users with different constraints to be able to view and use the content. (This includes both those who have a disability and those that are just using mobile technologies like phones to access the web).

Clarification on Web proscriptions regarding format: The Web Accessibility Guidelines do not restrict the way information on the Web is presented.

A common misunderstanding is that accessibility regulations restrict the way information on the web is presented. There are no guidelines or regulations that outlaw t a particular form or technology from be used to present information on the web. The closest thing that will be found is a recommendation that W3C technologies or other technologies developed in an open fashion be used. However, this is not a requirement, and the guidelines simply state that if other non-accessible technologies are used, that the information be available in some accessible fashion as well.

> 11. Use W3C technologies (according to specification) and follow accessibility guidelines. Where it is not possible to use a W3C technology, or doing so results in material that does not transform gracefully, provide an alternative version of the content that is accessible.

In most cases, the alternate accessible form is a short text phrase that only appears if requested.

Clarification on cost of accessibility as a barrier to companies: High Cost = Undue Burden = Not Required

During the hearing, a concern was raised regarding whether companies would be forced to tear down their websites or carry out extreme or burdensome conversions.

First – it should be noted that the vast majority of all information and services on the web can be made accessible for something on the order of 00.01% to 01% of the cost of creating and providing the information or service in the first place – especially if accessibility is addressed from the beginning of development. This would be far below any likely determination of an "undue burden" threshold.

For those situations where excessive effort is required for some reason or portion of the site the "undue burden" clause would come into effect.

Again – it should be noted that in almost all cases, making web sites and services accessible to people with disabilities also makes them more useable to people (without disabilities) who use small pocket computers, PDAs, cell phone browsers, and other mobile browsing technologies.

Common misunderstanding: No Need for Regulation because Industry is Already Doing It

The question was raised as to whether regulation was needed – or whether industry was already working on access.

A couple of observations can help to shed some light on this question. First - it should be remembered, that all of the companies working on more accessible web technologies, websites, etc., in any serious and concerted fashion are aware of the ADA, and most are aware of the Justice Department's ruling. Thus there is already a regulatory motivation in effect. Further, it is known that many of these companies would reduce their efforts significantly if there were no mandates and they knew that there would be no future mandates for the accessibility of their material.

An interesting parallel to this was observed with Section 508 the first time it came out. Section 508 required that computers and information technology purchased by the government be accessible to people with disabilities. A number of companies began gearing up accessibility efforts. Employees within companies told their management about the regulations and the fact they should be creating more accessible products to better compete for government contracts. Later, when the initial 508 was only sporadically enforced and

companies were not seeing accessibility provisions showing up in government RFPs, I began receiving calls from company employees saying that their companies were scaling back accessibility efforts as a result of the lax enforcement of the regulations.

I have heard similar rumblings with regard to Internet companies' behavior if the Internet were suddenly to be declared an accessibility-regulation-free environment.

Clarification and Information on Economic Motivation.

Several presenters suggested that economic motivations might cause industry to make their technologies accessible even without any regulation. The Trace Center has done extensive work with industry (including building access features into standard products) and has not found this to be the case. Trace has also just completed a three-year study looking at why companies do or do not incorporate accessibility features into their main product line. This research also supports the position that companies will not engage in substantive, long term accessibility efforts across their main mass-market products in the absence of either regulation or the fear of regulation.

Although other (non-regulatory) motivations have led to particular actions or caused features to appear, these efforts have not been maintained or applied across product lines. Companies also often provide particular access features for a product but omit other key access features resulting in a product that is only partially useful or useful only for people with some disabilities. Unfortunately, the piece that they do not provide access to is sometimes the "front door". In the context of the web this appears as web site that is largely accessible except that a person cannot use any of it because a few pages at the front are impassible.

Even when access is easy to implement it is very hard to accomplish in the absence of a **strong** motivator. Everyone in these companies is so busy that they are only getting to those things that are absolute financial homeruns or absolute necessities. Side markets, additional markets, diverse markets (such as people with disabilities) often end up on the list of "important things to do" that people never get to.

This is best illustrated by a story once told to me by a vice president of a large technology corporation.

It started when he asked me, "Why don't you just pass a law that requires us to do this." After asking him to repeat what he said, I told him how surprised we were to hear him say that and asked him why he said it. He said, "Two reasons".

"First," he said, "I think this is a really important thing for us to be doing. I only wish that I could present it to my colleagues as well as you did. Be that as it may, I'm going to take these materials back, and I'm going to set it right on top of my desk as a very important thing to do. However, also on my desk will be about six other stacks. Furthermore, two of them are likely to be smoking, and one of them is going to be on fire. I'll start putting out the fire, and one of the smoking stacks will burst into flame and another one will start smoking. I will spend the

rest of today putting out the fires and hopefully a couple smokers. When I go home tonight, I'm likely to still have a couple smokers. And in the morning my secretary will bring in four more stacks - at least one of which will be on fire and one of which will be smoking. This is the way the rest of the week, the month, and the year will go. A year from now, your materials will still be sitting on the corner of my desk. It will still be just as important -- and I'll still be putting out fires. It's just the way my job works.

"But if you pass a law that says our company must do this, then your stack will start to smoke...." (he paused for effect...)

"Also, if you pass a law, you solve another problem for us. Things are so competitive in our industry that we are afraid to ever take time out to work on anything that we don't know that our competitors are also looking at (unless it will let us leapfrog them in the market). If you pass a law that says we all have to do this, then we don't need to be afraid to take time out to address these issues – even if it is small."

That company was a not an Internet company but his analysis sounds to be even more true in the area of internet.

Disclosure Statement: "I am a professor at the University of Wisconsin and direct a research and development center with funding from the US Department of Education, National Institute on Disability and Rehabilitation Research, the US National Science Foundation, and industry. Last year I was asked by the National Federation of the Blind if I would consult with them in their complaint against America On-Line. I agreed to consult, and I have had one phone call with NFB staff on this matter back in November 1999 and none since. At the time I told them that I would also be available to answer questions for AOL should they ask. Also, I had asked that any fees that might be involved be donated directly to charity – so I have no financial interest in that case. The views expressed in this statement reflect only those of the author and do not represent the views of the federal government or any other entities.

Respectfully Submitted

Gregg C Vanderheiden Ph.D.

From: Susan Magnotti
To: "petervanderheim@hotmail.com".GWIA1.ROUTE_A; BKENNARD.K1PO1.K1DOM; Gloria Tristani; Harold Furchtgott-Roth; Michael Powell; Susan Ness
Date: 3/2/00 5:47PM
Subject: Re: Disabilities issues and 47CFR Part 68
Place: BKENNARD.K1PO1.K1DOM

Dear Mr. van der Heim,

The Commission's Part 68 streamlining/privatization proceeding is not intended to affect the Part 68 rules pertaining to hearing aid compatibility and volume control. A public notice released last summer discusses the scope of this proceeding:
http://www.fcc.gov/Bureaus/Common_Carrier/Public_Notices/1999/da991108.txt

You can view the transcripts from the public forums held last year on this subject in the Commission's Electronic Comment Filing System (ECFS) under CC Docket No. 99-216. If you would like additional information please feel free to contact me directly by email or by telephone: (202) 418-0871 (voice); (202) 418-0484 (TTY).
Sincerely,
Susan Magnotti

>>> "Peter van der Heim" <petervanderheim@hotmail.com> 03/02/00 05:09PM >>>

February 24, 2000

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CC: Art Wall; Bill Howden; Julius Knapp; Yog Varma